Supreme Court, U.S.
FILED
OCT 20 1986
JOSEPH F. SPANIOL, JR.
CLERK

86-657

In The
SUPREME COURT of the UNITED STATES
October Term, 1986

No.

HENRY MALACHOWSKI, et ux

HENRY MALACHOWSKI, et ux, in representative capacity, parents and parties in interest for AMY CHRISTINE MALACHOWSKI, a minor
Petitioners

-against-

CITY OF KEENE
MARK J. BENNETT, ESQ.

CITY OF KEENE POLICE DEPARTMENT
PATROLMAN RANDALL LaCOSTE
SERGEANT H. BROWN

JUDGE BERNARD J. HAMPSEY, Jr.
JUDGE RICHARD J. TALBOT

DAVID S. PARK, ESQ.

YOUTH SERVICES INC. of the MONADNOCK REGION
LINDA KENT

MICHAEL A. NOONAN, Ph.D.
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

HENRY MALACHOWSKI, et ux, Pro Se
28 Wright Street
Keene, New Hampshire 03431
(603) 352-5822

HENRY MALACHOWSKI, et ux, in representative capacity, parents and parties in interest for
AMY CHRISTINE MALACHOWSKI, a minor

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTION PRESENTED

1. Whether the lower federal court and Appeals Court for the First Circuit can deprive the minor, Amy, above named, from enforcing and prosecuting her Civil Rights action avering her Constitutional protected rights and legal rights of her false arrest, false imprisonment and deprivation of her liberty without due process of the law and equal rights to the law, as being her rights independent of her parents' Civil Rights action avering their Constitutional claims and legal rights of parents' custody rights which is protected by the due process clause of the Fourteenth Amendment of the Constitution of the United States.

Can the lower federal court hold these two (2) independent,, different causes of action,, different parties as Res Judicata?

2. Isn't this an abdication of jurisdic-

tion by the lower federal court where the minor, Amy's complaint shows deprivation of Constitutional protected rights in violation of § 1983? Isn't this reversible errors substantially effecting the petitioner's legal rights and obligations which, if uncorrected, would result in a miscarriage of justice and which justifies reversing a judgment in the court below?

3. After parking his car in parents' driveway, whether the minor, Amy, and her parents' Fourth Amendment rights were violated by a Keene patrolman's forced entry into parents' home, without permission to enter,.without probable cause where there was no offense being committed, seize the minor without a warrant, make an unreasonable arrest of the minor, tell her she is his prisoner and is going to YDC (Youth Development Center),, remove her from her home, never read her her Miranda Rights,

detain her overnight at the police station without a warrant and/or written authorization from a judge, deny her the right to her own counsel and /or parents present,. interrogate her and never inform her of the charge for her arrest.

4. Was Equal Protection and Due Process of the law under the Fourteenth Amendment and N.H. Statutes violated when the Keene District Court failed to give Amy and her parents written notice of a petition of the specific charges or factual allegations,. given to the child and her parents sufficiently in advance of the hearing to permit preparation as a constitutional requirement mandated by the U. S. Supreme Court in juvenile delinquency proceedings?

5. Can the Keene District Court nullify the U. S. Supreme Court essentials of due process of the law by failure to give written notification given to the child

and her parents of the minor's right to be represented by counsel retained by the parents, being that the minor is not indigent and where there is no written waiver for the court to appoint counsel for Amy and being that David S. Park, Esq., Mark J. Bennett, Esq., and Sgt. H. Brown were fully aware Amy had an attorney retained by her parents for her injury was not called?

6. Can the Keene District Court sustain a charge of delinquency of disorderly conduct when the court failed to order the recipients, who are named, by name, in the petition charge of August 4, 1984, and as necessary parties to the offense, RSA 644:2, to appear at the initial hearing for confrontation and cross-examination guaranteed to Amy under the 5th and 14th Amendments and by the N.H. Constitution, Part 1, art.15 and as required by the U. S. Supreme Court in re Gault?

7. Was it violative of due process of the law when the arresting officer was not present at the initial or adjudicatory hearing at the Keene District Court?

8. Was perjury committed by Sgt. Brown who was not a witness, when he signed the petition, under oath, which is contrary to the police report, stating that Amy committed a disorderly conduct offense on public property, NH RSA 644:2,, naming the parents as recipients,. that Amy was shouting obsenities at and having physical contact with Henry and Julia Malachowski; an offense which never occurred?

9. Can Sgt. Brown sign a petition for the recipients named in the petition when he is not a recipient to the offense?

10. Was the 5th and 8th Amendments of the U.S. Constitution and N.H. Constitution, Part 1, art. 15 violated when the minor was deprived of her liberty for thirty-

nine (39) days at YDC when a plea of "NOT TRUE" was made at the intial hearing, EXH. page 5b herein, where there was no evidence, no sworn testimony or confrontation was given against Amy by the recipients named by name in the petition of August 4, 1984 signed by Sgt. Brown?

11. Was the 6th and 8th Amendments violated when the minor was deprived of her right to be released to her parents, older married sister, relative or friend to obtain witnesses for her defense,, as a due process right to a fair trial?

12. Was the 5th Amendment violated when the minor was never given written notice of the charge against her,, where there is a plea of "chargeable" when neither the minor or her attorney (not retained by the parents) made such a plea at any hearing, and where the judge, prosecuting attorney and Amy's attorney affirmed Amy

was not a delinquent? Could the Keene District Court sustain personal jurisdiction over Amy?

13. Can Amy be denied equal protection and due process of the law by the city attorney suppressing exculpatory evidence favorable to her defense for acquittal by taking the police record of Amy out of the juvenile police files to give to his attorney so that it will not be used against him in parents' federal action in which he is named as defendant?

14. Can Amy be deprived of equal protection and due process of the law under the 14th Amendment by the City Attorney, Clerk of the Keene District Court and the Judge depriving the parents of their right under NH RSA 169-B:35 to see the juvenile file on Amy and the charge for her arrest to assist her in her defense?

15. Is the 1st Amendment offended by Amy

swearing in the confines of her own home, where there were no complaints filed; isn't this considered free speech?

16. Can the minor be denied the right to appeal when she does not know what an appeal means and was never told by her attorney?

17. Can the judge of the Keene District Court ignore the U.S. Supreme Court requirements of due process of the law and N.H. Constitution, part 1, art. 15, in juvenile delinquency proceedings where the minor was deprived of her liberty?

18. Was the Due Process Clause of the 14th Amendment violated when the Keene District Court failed to give written notice to the parents to appear in court, have authority to adjudicate parents' custody rights of Amy and all other rights protected and secured to Amy by the Constitution of the United States without

having personal jurisdiction over Amy and her parents?

19. Was due process of the law violated when the recipients named, by name, in the petition charge as necessary parties to the alleged offense,. unlawfully signed by Sgt. Brown,. were not summoned to court to testify at the time prosecution must establish probable cause to believe the minor committed the offense of disorderly conduct; where the arresting officer was not present to offer testimony and where prosecution and the judge were fully aware that Sgt. Brown cannot sign the petition being that he is not the recipients and that the petition charge conflicts with the police report?

20. Being that Sgt. Brown signed the petition of August 4, 1984 and was not a witness,. where such petition was never served upon the parents as required by

law,, N.H. RSA 169-B:7,. where parents are named as the recipients to the alleged offense,. never served upon Amy; wouldn't his testimony be inadmissible as being hearsay as decided by the U. S. Supreme Court?

21. Would it be considered double hearsay of a supposed "plea of chargeable" where the arresting patrolman was not present in court, where there was no evidence,. and where the parents were never given written notice of the petition of August 4, 1984 by the court and/or made known that they are named as the recipients to the offense to offer testimony on August 4, and September 11,. 1984,. to corroborate or rebut the offense in the petition of August 4, 1984, signed by Sgt. Brown that conflicts with the police report of August 3, 1984?

22. Isn't this considered lack of evi-

dence where the standard of reasonable doubt is precluded on grounds that Sgt. Brown was not a witness and his petition charge would be considered hearsay,. is inadmissible,. wherein the Keene District Court cannot sustain a charge of disorderly conduct without written notice given to the recipients to appear in court as necessary parties to the alleged offense RSA 644:2, prerequisite to confer subject matter and personal jurisdiction upon the court to act,. and without the arresting patrolman present at the initial hearing and the adjudicatory hearing, where Amy was deprived of her rights guaranteed under due process of the law,. the right to confrontation, cross-examination of witnesses against her and where there was no evidence; shouldn't the minor have been released instead of depriving her of her liberty? Isn't this violative of the

5th and 14th Amendments of the U. S. Constitution and N.H. Constitution, part 1, art. 15 and as required by the U. S. Supreme Court as in re Gault?

23. Where at the initial hearing of August 4, 1984, Amy's attorney Park (not retained by her parents) plead "NOT TRUE" EXH. page 5b herein,. never showing Amy or orally informing her of the petition charge of August 4, 1984 against her or never advised her of her Constitutional protected rights, agreed to place Amy in prison (YDC) because there was no other place to put her. Isn't this deprivation of liberty without due process of the law where said attorney was fully aware that the petition charge against Amy cannot be sustained because the court failed to call the recipients who are named by name in the petition offense to appear in court for confrontation and cross-examination

and where Sgt. Brown cannot sign the petition of August 4, 1984 on grounds that he is not the recipients named in the offense RSA 644:2, and that the petition charge is perjured and conflicts with the police report of August 3, 1984 showing Amy was arrested in her own home not on public property, and committed no offense on public property or private property, and that swearing in the total confines of her own home, where no complaints were filed, is protected free speech under the First Amendment of the Constitution of the U. S.?

24. At the January 2, 1985 hearing in U.S. District Court re Malachowski v City of Keene, et al, C-84-697-L, all defendants did not know who appointed Mr. Park as Amy's attorney; isn't it conflict of interest where Attorney Park was a former assistant attorney for the City of Keene and attorney for the Keene Police Depart-

ment?

25. If Mr. Park was supposed to be Amy's attorney,, wasn't it his duty to protect and defend Amy's rights secured to her by the Constitution of the U.S. and N.H. Constitution instead of aiding and abetting in prosecuting her,, depriving her of her liberty without due process of the law for 39 days, when he knew the petition charge against her was false and could not be sustained without corroboration?

26. Can the federal court (Martin F. Loughlin, U.S.D.J.) fail to do his duty to guard and enforce all rights secured to the petitioner, Amy, by the Constitution of the U. S., refuse to make a decision upon her constitutional claims of false arrest, false imprisonment, deprivation of liberty without due process of law by precluding Amy from federal court by entering his order of dismissal (id App page 1a) herein:

as res judicata, which is contrary to his order entered in re Malachowski v City of Keene, C-84-697-L dated January 4, 1985,

> "The placement to YSI by the adjudicatory hearing of September 11, 1984 was clearly illegal relative parents' due process rights...Exhaustion of State remedies is not an issue here ...The court finds that it does have jurisdiction for the federal constitutional violations pursuant to 28 U.S.C. § 1331 as a 42 U.S.C. § 1983 action....Younger v Harris type abstention only applies to the prosecutorial stage of a juvenile court proceeding...There is no adequate remedy at law for the parents because they have no appellate rights...The Keene District Court shall order that Amy be returned to the custody of her parents..."

then vacate his order after private agreement with the attorney for the state court judges, cited irrelevant authorities that the court does not have juridiction of the subject matter, dismissed and remanded parents' Civil Rights action avering constitutional claims to state court where parents have no action pending?

27. Whether the minor, Amy, above named

petitioner, has a constitutional protected right under the Due Process and Equal Protection Clause of the 14th Amendment of the Constitution of the U. S. to have the assistance of her parents to be named as parties in the caption of her Civil Rights action, to aid in her defense on grounds that, Amy is a minor, numerous of her constitutional and legal rights are integral and dependent upon her parents as decided by the U.S. Supreme Court in re Gault. The petition charge, RSA 644:2 of August 4, 1984, in Keene District Court, names her parents as recipients in a fraud upon Amy, deprived Amy of her liberty without due process of the law, where the Keene District Court (Richard J. Talbot) illegally gave custody of Amy to YSI without a petition and/or defining the state's interest for such seizure, where YSI illegally continued custody of Amy, committed illegal

acts upon Amy, an incompetent minor, for money,. to prevent Amy to be returned to her parents.

28. Where there is a plea of "NOT TRUE" (id EXH page 5b) and where the Keene District Court did not find that Amy committed the alleged offense RSA 644:2 (record shows, Amy was placed at YDC because there was no foster home placement open), Can the Keene District Court order Amy to have a psychological exam (id EXH page 5b) without the court giving prior notice to Amy and to her parents as required by law RSA 169-B:20, RSA 169-B:21, of their right to object. Can Dr. Michael A. Noonan, Ph. D., a private psychologist, perform a psychological evaluation upon Amy where the record clearly shows there is a plea of "NOT TRUE" (id EXH page 5b) and that Amy's parents and as recipients as the petition of August 4, 1984 shows that they

were not served written notice of the petition of August 4, 1984 as required by law RSA 169-B:7. Isn't such psychological evaluation performed upon Amy an impermissible intrusion of Amy, and also Amy's parents' rights of "privacy" and "interest" protected by the 4th Amendment of the Constitution of the U. S. Isn't it also violative of due process of the law where there was no notice given to Amy or to her parents by the court of such psychological evaluation and of their right to object. Where Amy was never read her Miranda rights, isn't such information in the psychological report inadmissible in state and federal courts as being unconstitutionally obtained? And being unconstitutionally obtained where the court had no personal jurisdiction of Amy, and where the state defaulted in detaining Amy after the maximum twenty-one (21) day period set

by law RSA 169-B:14 II, did a psychological evaluation without having personal jurisdiction over the parents, and without parents or counsel present to protect Amy's rights and her parents' clearly defined rights protected by the 4th. Amendment of the Constitution of the U. S.?

29. Prior to, during and after performing a psychological evaluation upon Amy on August 28, 1984, Dr. Noonan was made aware,, knew,, and should have known that Amy posed a danger to herself, being that Amy was placed in prison (YDC) on August 4, 1984 on a plea of "NOT TRUE". That such deprivation of her liberty for 25 days in prison was depressing to Amy,, especially when Amy was told by her Attorney, Mr. Park,, that she would be temporarily placed at YDC for only a short stay, because a foster home was not yet available. Within a few hours after Dr. Noonan's impermissible intrusion

into Amy's "privacy" and "interest" which is protected by the 4th Amendment,, Amy further depressed,, injested cleaning solution. Her throat was burning, she was ruahed to the hospital. Was Dr. Noonan negligent in failing to warn the YDC staff of such facts and that his forced intrusion into Amy's "privacy" and "interest" aggrivated Amy's mental condition of depression, putting Amy in a desperate situation that was likely to lead to Amy harming herself?

30. Whether the action of the defendants,, private persons, above named, can constitute "state action" to support suit under 42 USCS § 1983; § 1331; § 1343(a)(3); 1st, 4th and 14th Amendments of the Constitution of the U. S.? Where the petitioner has shown evidence on record of prior, private agreements with the state officials, who were wilful participants in

concerted overt acts, in joint activity with the state, deprived Amy of her liberty and freedom for her minority, resulted from state statutes as being unconstitutional, void for vagueness as applied, that was procedurally defective under the Due Process and Equal Protection Clauses of the Fourteenth Amendment stated a cause of action under 42 USCS § 1983. Since the statutory scheme was a product of "state action" of the private party's joint participation with state officials in depriving Amy of her liberty and freedom without due process and equal protection of the law, is it not sufficient to characterize that party as a "state actor" for purposes of the Fourteenth Amendment as decided by the U.S. Supreme Court?

31. Can Judge Talbot deprive Amy, an incompetent minor, of equal protection of the law by refusing to enter parents' re-

quest for a Restraining Order against Steven D. to have him kept away from Amy for her protection? This Steven D. is a known drug addict, pervert, well known to Judge Talbot, the Keene District Court, the Keene Police Department and the New Hampshire State Police; and while Amy was at the illegal placement in the YSI foster home, this Steven D. abused, assaulted, drugged and molested Amy and continuously took her out of the State of New Hampshire for illegal and immoral purposes in violation of state and federal laws; facts with which parents sought said restraining order.

32. Can Linda Kent, director, of YSI, knowingly permit this known criminal, Steven D. to visit Amy and stay at the YSI foster home (Robbins), permit Amy to be abused,, assaulted, drugged (controlled substance) and molested, stating to the par-

ents that such acts "are permitted under legal supervision"? Isn't this violative of New Hampshire law and federal laws and the U. S. Constitution where Linda Kent suppressed,. concealed and denied the truth of such information from Amy's parents,. which parents inadvertantly discovered, so that YSI could profit by Amy's stay at the Robbins foster home?

33. Where federal court, Martin F. Loughlin, USDJ, in his Order of January 4, 1985, held Judge Talbot, in giving custody of Amy to YSI, was clearly illegal relative parents' due process rights; was the foster parent (B. Robbins) negligent in driving his vehicle with Amy a passenger on icy,. snowy road at about 40 miles per hour, had a roll-over with Amy receiving serious head,. neck and back injuries? Can Judge Talbot, Linda Kent and B. Robbins (who carried no insurance on the vehicle) re-

fuse to provide Amy with on-going medical attention where Amy was complaining of neck and back pain?

34. Can Judge Talbot,. Linda Kent and B. Robbins refuse to permit Amy's parents the right to provide medical attention for Amy, even when formally requested?

35. Can Amy be deprived of her liberty without being orally notified and served written notice of the petition charge against her and be deprived the opportunity to a hearing to be heard to the charges against her, which never came and were never brought forth by the court? Isn't this the makings of a Kangaroo Court?

36. Amy was held by the Keene District Court under NH RSA 169-B Juvenile Delinquency Statute, which has no provisions for "Legal Supervision", RSA 169-C has provisions for "Legal Supervision" under Section 3 XVIII. which states:

> "Legal supervision" means a legal status created by court order wherein the child is permitted to remain in his home under the supervision of a child placing agency subject to further court order."

Can Judge Talbot give "legal supervision" of Amy to YSI without a petition filed under NH RSA 169-C and permit YSI to place Amy in a foster home not made known to her parents and without permitting contact with Amy? Isn't this kidnapping?

37. Where Patrolman LaCoste, in response to several complaints of disorderly conduct on public and private property, arrested several minors and adults. He was beaten and his police car damaged. All arrested were immediately released. Should Amy have the same rights under Equal Protection of the laws, and also be released? She did not beat Patrolman LaCoste or damage his police car, all Amy did was swear in the total confines of her own home, which is not an offense, no complaints

were filed. Is this a showing of "bad faith" on the part of Patrolman LaCoste to make such unwarranted arrest of Amy in her own home in violation of Amy's clearly protected rights secured to Amy under the 1st and 4th Amendments of the Constitution of the U. S.? Isn't this kidnapping?

38. Where there is suppressed and concealed court files and police reports, should Amy's parents have to file suit with federal court C-84-697-L, to have federal court order such files and police reports released to the parents so they can help Amy defend the charge against her and why the Keene Court took custody of Amy without a petition filed? Isn't this violative of Due Process and Equal Protection of the laws as decided by the U. S. Supreme Court, other appeals courts and federal courts? See EXH id page 10b and 13b.

TABLE OF CONTENTS

	Page
Questions Presented for Review.....	i
Table of Contents.....	xxvii
List of Parties to the Proceeding.	xxviii
Counsel for the Respondents.....	xxviii
Table of Authorities.....	xxix
Decision Below.....	2
Jurisdiction.....	3
Constitutional and Statutory Provisions Involved.....	4
Statement of the Case (a) The Facts.....	7
(b) Proceedings Below.....	21
Reasons for Granting the Writ.....	28
Conclusion.....	56
Appendix.....	a
Exhibits.....	b

LIST OF PARTIES TO THE PROCEEDING

HENRY MALACHOWSKI and/or
JULIA MALACHOWSKI

HENRY MALACHOWSKI and/or
JULIA MALACHOWSKI in representative capacity, parents and parties in interest for
AMY CHRISTINE MALACHOWSKI, a minor
Plaintiffs-Petitioners

-against-

CITY OF KEENE
MARK J. BENNETT, ESQ.

CITY OF KEENE POLICE DEPARTMENT
PATROLMAN RANDALL LaCOSTE
SERGEANT H. BROWN

JUDGE BERNARD J. HAMPSEY, Jr.
JUDGE RICHARD J. TALBOT

DAVID S. PARK, ESQ.

YOUTH SERVICES, INC. of the MONADNOCK REGION
LINDA KENT

MICHAEL A. NOONAN, Ph.D.
Defendants-Respondents

COUNSEL FOR DEFENDANTS

N O N E

TABLE OF AUTHORITIES

Cases	Page
Alsager v Dist. Court of Polk Cty., Iowa, 518 F2d 1160 (8th Cir. 1975); 406 F.Supp 10 (1975); 545 F2d 1137 (8th Cir. 1976).....	40
American Civil Liberties Union v Chicago, 431 F.Supp 25 (1976).....	50
Anno - Juvenile Delinquency - Process. 90 A.L.R. 293	
Karrib v Bailey,. (1920) 212 Mich 502	35
Sharp v State,. (1961) 240 Miss 629..	35
Ex parte Naccarat,. (1931) 328 Mo 722	35
Barber v Page,. 390 US 719 (1968).....	35
Basista v Weir,. 340 F2d 74 (1965) (3rd Cir.).....	29, 35
Beck v Ohio, 379 US 89 (1964).....	28
Bell v Burson, 402 US 535 (1971).....	37
Bevins v Six Unknown Agents, 403 US 388 (1971).....	28
Boykin v Alabama, 25 L Ed2d 274(1969)..	46
Woods v Rhay, 68 Wash 2d 601....	45, 46
Brady v Maryland,. 373 US 83 (1969)....	38
Bramlet v Peterson, 307 F.Supp 1311 (1969).....	46
Bush v Lucas 462 US 367 Jurisdiction.. arising under the Constitution	23
citing Bell v Hood 317 US 684..	23, 50

Page

Doe v County of Lake, Indiana
399 F.Supp 553 (1975)..... 43

Escalero v N.Y. Housing Authority,
425 F2d 853 (2d Cir. 1970).. 43, 55

Farretta v California, 422 US 806.... 46

Garner v Louisiana, 368 US 157. 35, 44, 46

Goss v Lopez, 419 US 656 (1975).... 51

In re Gault, 387 US 1 (1967).. Passim

Goldberg v Kelley, 397 US 254..... 43

Haaf v Grams, 355 F.Supp 542 (1973).. 37

Hedgwood v Kindrik, 264 F.Supp 720
(1967)..... 35
Kent v United States, 383 US 598
In re Gault, supra

Henry v United States, 361 US 98(1959). 29

Hillard v Williams, 516 F2d 1344
(6th Cir. 1975)..... 37

Hoffman v Halden, 268 F2d 280
(9th Cir. 1959)..... 40

Johnson v U.S. 333 US 13 (1947)... 28

Kinney v Lennon, 425 F2d 208
(8th Cir. 1970)..... 36

Lego v Twomey, 404 US 477..... 46

Littleton v Berbling, 468 F2d 389
(7th Cir. 1972) 50

Page

Llaguno v Mingey, 763 F2d 1560 (7th Cir. 1985)..... 29, 33

Lusk v Roberts. 611 F.Supp 564 (1985)..... 33

Mapp v Ohio, 367 US 643 (1961).... 28, 30

McBride v Jacobs, 247 F2d 595 (USCS Dist. Col 1957)..... 47

McCarthy v U.. S.. 394 US 459 (1969)... 46

McCollester v City of Keene,NH 514 F.Supp 1046 (1981) 51

McKeiver v Pennsylvania, 403 US 528.. 46

Meyer v Nebraska 262 US 390..... 36

Miranda v Arizona 384 US 436.... Passim

Mitchum v Foster 407 US 225 (1972)... 39

Molloy v Hogan 378 US 1..... 46

Monroe v Pape 365 US 167 (1961)..... 28

Mooney v Holohan 294 US 103 (1935)... 38

Motes v U. S. 178 US 458 (1900)..... 35

Newton v Burgin 363 F.Supp 782 (1973). 40

Peterson v Stanczak 48 F.R.D.. 429 (1969)..... 29

Payton v New York 445 US 573 (1980)... 28

Pointer v Texas 380 US 400 (1965)..... 35

Page

Prince v Massachusetts 321 US 158.... 36

Rankin v Howard 633 F2d 844
(9th Cir. 1980)..... 35, 42

Right to Confront Witnesses
23 L Ed 853..... 35
Pointer v Texas, supra..... 35
In re Gault, supra 35
Boykin v Alabama,. supra 35
Molloy v Hogan,. supra..... 35

Right to Counsel, 18 L Ed 2d 1420
In re Gault, supra.....Passim
Burgett v Texas 389 US 109
Westbrook v Arizona 384 US 150

Roger v Peck 199 US 425 (1905)..... 52

Sexton v Gibbs 327 F.Supp 134 (1970).. 29

Shore v Howard 414 F.Supp 379 (1976)
at 385 (4,6,7,7) citing ex parte
Virginia..... 36

Stanley v Illinois 405 US 645 (1972).. 34

U. S. v Price 383 US 787..... 39

Washington v Texas 388 US 14 (1967)... 36

Watters v Parish 402 F.Supp 696 (1975) 51

In re Winship 397 US 358
25 L Ed 2d 368..... 36

11 A.L.R. 4th 719, Right of Parent
to Represent Child in re RSA 169-B

26 A.L.R. - Arrest Without Warrant -
Entering House at 286..... 29

Page

N. H. Constitution, Part 1, art. 2, Passim

N. H. Constitution, Part 1, art. 15, Passim

N. H. Constitution, Part 1, art. 19, 28, 33

In re Bryan L. 123 NH 420 (1983)..... 41

DiPietro v Lavigne 98 NH 294..... 31, 43

In re Eric C. 124 NH 222 37

In re Poulin 100 NH 458..... 31, 35, 43

In re Russell C. 120 NH 260 (1980). 31, 34

State v Chaisson 125 NH 810 (1984)... 29

State v Laponsee 115 NH 56 (1975).... 32

State v Lefebvre 91 NH 382..... 42

State v Mealey 100 NH 228 (1956)..... 32

State v Morse 125 NH 403 (1984).... 29, 30

State v Nickerson 120 NH 821 (1980).32, 33

State v Robert H. 118 NH 713 (1978)... 42

New Hampshire Statutes

RSA 644:2..... Passim

RSA 627:6 Parent can correct child.... 29

RSA 169-B..... Passim

RSA 169-B:6..... 31

RSA 169-B:7, I, II, III..... 30, 31, 33

Page

RSA 169-B:11..... 36

RSA 169-B:12, I,(a) citing 11 A.L.R. 4th 719,. Parent can represent child

RSA 169-B:13..... 31, 34, 47

RSA 169-B:14..... 36, 37

RSA 169-B:15..Arraignment --Passim

RSA 169-B:16.. September 11, hearing

RSA 169-B:17..... 34, 42

RSA 169-B:18 Custody - Passim

RSA 169-B:19 .. October 11, 1984 hearing

RSA 169-B:20..... 12

RSA 169-B:21..... 12

RSA 169-B:29..... 47

RSA 169-B:35..... 38

STATUTES

28 U.S.C. Section 1331..... Passim

28 U.S.C. Section 1343(3)..... Passim

42 U.S.C. Section 1983..... Passim

CONSTITUTION OF THE UNITED STATES

Amendment 1..... Passim

Amendment 4..... Passim

Page

Amendment 5.....Passim

Amendment 6..... 36

Amendment 7..... 41

Amendment 8..... 37

Amendment 14.....Passim
Due Process Clause.....Passim
Equal Protection Clause.....Passim

Supplemental Authorities

Auster Oil & Gas Inc. v Stream 764 F2d 381 (5th Cir. 1985)..... 39

City of Claremont v Truell 126 NH 30 (1985)..... 34, 36, 43

Clement v Four North State Street Corp. 360 F.Supp 933 (1973) Bownes, USDJ.. 43

Conover v Montemuro 477 F2d 1073 (3rd Cir. 1973)..... 40

Gerstein v Pugh 420 US 103 (1975)..... 37

Henry v U.S. 361 US 98 (1959)..... 29

Lugar v Edmondson Oil Co. 457 US 922 (1982)..... 51

Madison v Purdy 410 F2d 90 (5th Cir. 1969)..... 29

Manning v Ketchum 58 F2d 948 (6th Cir. 1932)..... 42, 50

Opper v U.S. 348 US 84 (1954)..... 49

Page

Perez v Sugarman 499 F2d 761 (2nd Cir. 1974)..... 39

Sims v State Dept. of Public Welfare 438 F.Supp 1179 (1973). at (13).. 48

Spires v Bottorff 317 F2d 273 (7th Cir. 1963)..... 52

State v Benoit 126 NH 6 (1985).... 30, 46

25 L Ed 2d 368 at 960
9. Right to Confrontation or Cross Examination..... 44

Anno - Custody of Child - Right to Hearing,. 76 A.L.R.. 242
Kennedy v Meara (1906) 127 Ga 68.. 34
McEntee v Lynch (1906) 223 Ill 346.. 34
Ex parte Molloy (1918) 122 Va 198 35

Moore's Federal Practice - RES JUDICATA
0.411 Persons Bound by Prior Adjudication..... 54

Wasson v Trowbridge 382 F2d 807 (2nd Cir. 1967)..... 55

In Sims, above as for psychological evaluation and procedure.

In The

SUPREME COURT of the UNITED STATES

October Term, 1986

No.

HENRY MALACHOWSKI, et ux

HENRY MALACHOWSKI, et ux, in representative capacity, parents and parties in interest for AMY CHRISTINE MALACHOWSKI, a minor

Petitioners

-against-

CITY OF KEENE
MARK J. BENNETT, ESQ.

CITY OF KEENE POLICE DEPARTMENT
PATROLMAN RANDALL LaCOSTE
SERGEANT H. BROWN

JUDGE BERNARD J. HAMPSEY, Jr.
JUDGE RICHARD J. TALBOT

DAVID S. PARK, ESQ.

YOUTH SERVICES INC. of the MONADNOCK REGION
LINDA KENT

MICHAEL A. NOONAN, Ph.D.

Respondents

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the

United States Court of Appeals for the First Circuit dated August 26, 1986 which affirmed the judgment of the district court dated April 10, 1986 of the court's ORDER OF DISMISSAL dated April 10, 1986.

DECISION BELOW

The Court of Appeals for the First Circuit,, namely Levin Campbell, Chief Judge,. Bownes and Breyer,. Circuit Judges,. entered its MEMORANDUM AND ORDER on August 26,. 1986 affirming the judgment of the lower federal court,. a copy of such MEMORANDUM AND ORDER is printed as page 11a of the Appendix herein.

On September 02, 1986, petitioner returned the Appeals Court Memorandum and Order entered August 26, 1986 in answer stating:

"This Court has no jurisdiction or authority to decide appeal. Except to

remand for compliance with Federal Rules of Civil Procedure. There is no record.

Is printed on page 19a of the Appendix herein.

JURISDICTION

This petition for certiorari to review the Memorandum and Order of the United States Court of Appeals for the First Circuit entered August 26, 1986, is timely made within 90 days.

The jurisdiction of this Court to review such Memorandum and Order is invoked pursuant to 28 U.S.C. Section 1254 (1), Rule 17 (æ)(c) of this Court, federal questions and legal rights; this case comes within the provisions because the decision of the Court of Appeals for the First Circuit in affirming the lower federal court's judgment,, is in conflict and repugnant to the U.. S. Supreme Court decisions,. other federal and Appeals

Court decisions and to the Constitution of the United States and to the laws enacted by Congress. is abuse of duty.

CONSTITUTIONAL and STATUTORY PROVISIONS INVOLVED

1st Amendment to the Constitution of the United States, provides:

> "Congress shall make no law....or abridging the freedom of speech.."

4th Amendment to the Constitution of the United States, provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated,. and no warrant shall issue but upon probable cause.."

5th Amendment to the Constitution of the United States, provides:

> "No person shall be held to answer ....nor shall be compelled in any criminal case to be a witness against himself,. nor be deprived of life,. liberty,. or property,. without due process of law..."

6th Amendment to the Constitution of

the United States, provide:

> "In all criminal prosecutions..to be informed of the nature and cause of the accusation; to be confronted with witnesses against him; to have compusory process for obtaining witnesses in his favor; to have assistance of counsel for his defense."

7th Amendment to the Constitution of the United States, provides:

> "Right to trial by jury"

8th Amendment to the Constitution of the United States, provides:

> "Excessive bail shall not be required,, nor excessive fines imposed, nor cruel and unusual punishment inflicted."

Section 1 of the 14th Amendment to the Constitution of the United States, provides:

> "...nor shall any State deprive any person of life,, liberty,, without due process of law,, nor deny to any person within its jurisdiction the equal protection of the laws."

28 U.S.C. Section 1331 Federal Question

> The district courts shall have original jurisdiction of all civil ac-

tions arising under the Constitution, laws,, or treaties of the United States.

28 U.S.C. Section 1343 (3)
Civil Rights and elective franchise

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(3) To redress the deprivation,, under color of any State law,, statute, ordinance, regulation,, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

42 U.S.C. Section 1983
Civil action for deprivation of rights

Every person who, under color of any statute, ordinance,, regulation,, custom,, or usage,, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws,, shall be liable to the party injured in an action at law,, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

(a) The Facts

Petitioner, a minor, Amy Christine Malachowski,. (hereinafter Amy), above named,. through her parents and parties in interest,. in representative capacity,. by legal adoption in 1969 at age eleven (11) months and has had excellent family relationships evinced by school records, other family members and friends.

On Friday, August 3, 1984 at 9:40 P.M., when Amy's parents realized she was not at home,. and fearing for her health due to a serious head injury, Mrs. Malachowski called the Keene Police for a possible runaway,. while Mr. Malachowski searched the area in his car.

Amy was found by her father near the residence of the brother of the 16 year old male who parents forbade Amy to see, and was brought back home by her father.

Keene Patrolman Randall LaCoste, after parking the police car in the parents' driveway, appeared at the kitchen door and was told by the father that Amy was already home. Amy, at that time, was attempting to throw-up in the kitchen sink, saw the patrolman,. became annoyed and briefly started to use foul language at her father in the total confines of her home.. The patrolman,. without a warrant,. without permission from the parents, without probable cause, unreasonably forced entry by pushing the kitchen door from the father's holding, entered petitioner's home where no offense was being committed, 5-10 minutes later,. while on the second floor,. where Amy was not listening to the patrolman or using foul language,. but only mumbling to herself,. which could not be heard on private or public property,. the patrolman shouted at Amy to "Shut-up"

then without probable cause,, told her she was arrested,,is his prisoner and is going to YDC. Without giving Amy or her parents the charge for the arrest or reading Amy her Miranda rights. Patrolman LaCoste took Amy to the Police Station where she was detained overnight without a warrant and/or written pre-arraignment orders from a judge. She was not allowed to call her parents or her attorney, Mr. "O", but was interrogated without an attorney.

Parents went to the police station were told nothing but that the juvenile officer will call in the morning.

Parents attempts to contact Mr. "O" Friday night and Saturday were futile.

At 8:50 a.m. Saturday,.August 4, 1984,. Sgt. H. Brown, juvenile officer,.'phoned the parents that there was to be a hearing at 9:00 and asked if Amy hit them; the response was "No, never". Parents

were not told where the hearing was to be held or that it was an arraignment, or given the reason for Amy's arrest or why she was being detained. Parents repeatedly insisted upon being present, were told it was not necessary, would be better if they did not come, would be hard on the parents and would cause more trouble. He never clarified what trouble.

At 10:00 a.m. that day, Sgt. Brown 'phoned the parents and said he is taking Amy to YDC, she denied the charges, she will have no record, will be detained for twenty-one (21) days,, and will realize the grass is not greener on the other side, and will be glad to come home.

Later that day, Amy called her mother several times begging to come home, does not know why she is at YDC, said they tried to find a placement for her, that there is to be a hearing on August 21

and asked to get the attorney to get her out..

On Monday, August 6,, 1984 parents were finally able to contact Amy's attorney, Mr. "O", told him to protect Amy and get her out of YDC, parents believe there is a mistake in Amy's arrest, were never told why Amy was arrested in her own home by the police, and that Amy called home several times on Saturday.. Mr. "O"'s reply was that she will learn that the grass is not greener on the other side. Mr. "O" was retained as Amy's attorney for the actior against Welfare for Amy's injury, was given evidence of her injury and the fact that she may not be competent and could be further injured by her detention at YDC.

On August 24, 1984,, parents, at Amy's request,, visited her at YDC and later met with Mr. Adams, administrator, who relat-

ed that he overlooked the psychological evaluation. Parents were never given written notice of such evaluation and of their right to object under NH RSA 169-B: 20 and RSA 169-B:21,, for such unconstitutional invasion into Amy's and her parents' "privacy" and "interests" protected by the 4th Amendment of the Constitution of the United States. Parents noted a distinct personality change in Amy which was caused by the injury to her head. It was Amy, not the Keene District Court, who notified her parents that the hearing of August 21, 1984 was postponed to September 11, 1984.

Parents were given no notice by the court,, written or otherwise,. of the hearing on September 11, 1984,. or that it was to be an adjudicatory hearing. At the onset of the hearing, Mr. Park, City attorney Mr. Bennett and Judge Talbot said that Amy was adjudicated not a delinquent.

Parents then asked the court, "On what grounds is Amy being held?" and were ignored. A recess was called so that Mr. Archibald of Youth Services, Inc. (hereinafter YSI) could convince the parents, who were adament to Amy being placed in a foster home, since, as stated by Mr. Archibald, custody was already given to YSI by prior agreement by Judge Talbot, MM Park and Bennett, with a foster home set (wherein divorce was in progress). Mr. Archibald further stated that Mr. Parento (Amy's school counselor, who, parents later found out is an officer and one of the founders of YSI) had been in contact with him and discussed Amy. (conflict)

Judge Talbot, MM Bennett and Park ignored Amy's constitutional protected rights, placed Amy with YSI without written notice of a petition given to Amy or her parents or statutory grounds for terminating

parents' physical and legal custody rights of Amy and her right to be free. NOTE: At the hearing of September 11, there was no plea of "chargeable" or "guilty" made by Amy or Mr. Park. The issues of the petition charge against Amy were never brought before the court at this hearing or any other hearing. It was not an adjudicatory hearing under RSA 169-B:16, it was a custody hearing where YSI took "legal supervision" of Amy (id EXH page 7b) in violation of Amy's rights and her parents' due process rights which Federal Court held as illegal in its Order of January 4, 1985.

Right after the September 11, 1984 hearing and on subsequent dates, parents asked Mr. "O" to appeal; his response was that "statute prevents appeal". Parents demanded Mr. "O" file a federal action for violation of constitutional protected

rights. On September 18, 1984 Mr. "O" withdrew giving records to parents.

Parents sought to see the files at Keene District Court to see just what the charges were for Amy's arrest, why she was being held and the grounds by which the court deprived the parents of their custody rights. They were denied access by the Clerk of the Court, Mr. Bennett and the presiding judge. Also denied them was the right to see the police reports.

On October 4, 1984, in seeking to retain another attorney to handle the Welfare matter of Amy's injury, parents had him review the records given them by Mr. "O". It was then that they were apprised that there was a petition against Amy and asked if she ever hit them since that's what the charge is. When he was told what actually happened, he advised their contacting the juvenile officer who signed

said petition and have the charges dismissed since they are false. On October 5, parent met with Sgt. Brown and made such request and also sent written request to him with a copy to the Court and to Mr. Bennett. (Id EXH. page 8b)

Parents find that they were never given legally sufficient written notice of the petition of August 4, 1984 as required by law, NH RSA 169-B:7 and the U.S. Supreme Court in juvenile delinquency proceedings as in re Gault 387 US 1. Parents are named, by name, as the recipients to the offense of disorderly conduct, NH RSA 644:2 against Amy (id EXH page 1b) to which the parents never filed a complaint; the parents were never called to court for confrontation or cross-examination. The arresting officer,. Patrolman LaCoste, was not in court at the initial hearing of August 4 or at the hearing of

September 11, 1984, and since Sgt. Brown was not a witness to the alleged offense, he could not offer testimony as it would be considered inadmissible as being hearsay, and due to the fact that the alleged offense never happened.

Parents question just who was in court at the initial hearing, and if there was a judge present.. Statements were made at the February 13, 1985 hearing which raise doubts whether a judge or Mr. Bennett were there.. Sgt. Brown had said that Judge Hampsey made the order on August 4, whereby Amy was committed to YDC; the state's attorney for the judges say, "no, Judge Talbot presided". When the question of who made the order on August 4, 1984 for the City of Keene to be the legally liable unit for Amy's placement, Judge Talbot said he did not issue the order; thereby discharging the lien (attachment upon

parents' home) for the cost of the placement of Amy. See (id EXH page 18b). While at the October 11, 1984 hearing,. after parent recited the due process procedures in re Gault and showed parents were not served written notice of the August 4, 1984 petition as required by law RSA 169-B:7 (as shown in id EXH page 2b, 3b) that they are named as the recipients to the offense (id EXH page 1b,. 2b), were never called to court for confrontation and cross-examination, that the offense is false; Judge Talbot questioned Mr. Bennett whether due process was met on August 4,. to which Mr. Bennett's reply was, "I believe so". Parents moved for dismissal of the false charges against Amy which Judge Talbot ignored.

Commencing on August 4, 1984 to June 21,. 1985, Amy and her parents were never given written notice of the petition of

August 4, 1984 as required by law or of the statutory grounds for terminating parental rights defining the state's interest for taking custody of Amy to give to YSI as required by law. Federal Court in its order of January 4, 1985, held: "On September 11, 1984 Judge Talbot ordered that YSI foster home take custody of Amy without instigating a neglect or CHINS petition. RSA 169-C and 169-D. The Judge acted on the original delinquency petition. RSA 169-B:19 and rights to due process forbid a child adjudicated as delinquent to be placed in a foster or group home used for the placement of neglected or CHINS petition child. See, In re Arnold H. 121, N.H. 759 (1981); Shone v State of Maine, 406 F.2d 844, 47-49 (1st Cir. 1969). Such a change in placement requires full due process safeguards of prior written notice. Shone, supra, at 847. The place-

ment to YSI by the adjudicatory hearing of September 11, 1984 was clearly illegal relative the parents' due process rights. (Ex I, id. p.2)." Judge Talbot said: "Amy is not a delinquent", therefore, NH RSA 169-B, delinquency statute against Amy can no longer apply. There were no statutory grounds for holding Amy. Parents moved for return of custody and dismissal of the case against Amy, but were continuously denied or ignored. The court was without personal jurisdiction over Amy and her parents to adjudicate their rights, being that Amy and her parents were never served written notice of the petition of August 4, 1984 as required by law, RSA 169-B:13 I(a), RSA 169-B:7 and as required by the U. S. Supreme Court in re Gault, supra, a copy of which was given to Judge Talbot at the October 11, 1984 hearing which he ignored, refused to dismiss the

action against Amy for the court's failure to comply with the requirements of due process of the law and equal protection of the laws, and that without the recipients and the arresting officer in court at the initial hearing, the court had no case. Judge Talbot continued custody of Amy with YSI further depriving her of her liberty without due process of law causing serious and irreparable injuries and harm that will never be dissapated by his negligence and total disregard of the laws imposed upon him.

(b) Proceedings Below

Petitioner could not obtain legal representation for Amy and for themselves due the fact that state court judges were involved.

Certain of the parents' constitutional protected rights, relative to the minor's legal and constitutional protected rights

which are dependent upon her parents, as decided by the U.S. Supreme Court in re Gault, 387 US 1, were found to be violated. Where such evidence, favorable for Amy's acquittal, was stolen, suppressed and concealed by the above named defendants, and where there was continuous dereliction of duty by Judge Talbot in depriving Amy of Due Process and Equal Protection of the laws,. committing overt and prohibited acts with the named defendants, who were wilful participants in violation of the Constitution of the U. S., N. H.. Constitution and laws imposed upon him,, suit was therefore filed by the petitioners with the U. S. District Court,. District of New Hampshire at Concord on April 01, 1986 acting in representative capacity,. parents and parties in interest for their daughter, Amy Christine Malachowski, above named minor, and for themselves as Pro Se

under the Civil Rights Act § 1983; Federal Question Jurisdiction § 1331; Federal jurisdiction predicated under § 1343(3) and under the 1st, 4th, 5th, 6th, 7th, 8th and 14th Amendments of the Constitution of the United States avering deprivation of Amy's constitutional protected rights against false arrest, false imprisonment, deprivation of liberty without Due Process of the law and Equal Protection of the laws; such unconstitutional conduct of all defendants causing irreparable injury and harm to Amy; with claims for money damages, Docket No. C-86-150-D. Bush v Lucas 462 US at 654.

U.S. District Court, Martin F. Loughlin, USDJ, precluded Amy from vindicating deprivation of her constitutional protected rights and legal rights by dismissing the action (id App page 1a) ten (10) days after said suit was filed as being res judicata, sending his Order of Dismissal to

all defendants named in the caption of the instant action, to the First Circuit Court of Appeals and to all attorneys listed in parents' action, Malachowski v City of Keene,. et al, C-84-697-L, wherein Amy is not a party named in the caption. There was no complaint forwarded to the named defendants in the instant action being that petitioners' papers, submitted to the U.S. District Court on April 01, 1986 for processing, were never returned to the petitioner for service upon defendants. NOTE: Petitioner was orally informed by the Clerk of the Federal Court that the complaint was forwarded to all defendants, was later held as being "not true".

On April 25, 1986 petitioner filed Notice of Appeal to the U.S. Court of Appeals for the First Circuit (App Docket No. 9). (see attached App id page 7a)

Petitioner submitted a brief to the

First Circuit Court of Appeals, dated July 14,, 1986. NOTE: U.S. District Court docket shows NO ATTORNEYS OF RECORD, NO RETURN OF SERVICE, NO ANSWERS TO PETITIONERS' COMPLAINT.

Martin F. Loughlin, USDJ, deprived petitioner of Process under Rule 4(a)(b); under Federal Rules of Civil Procedure it is petitioner's responsiblity to serve summons and copy of complaint upon all named defendants in the instant action.

Martin F. Loughlin, USDJ, clearly abused his discretion and usurpation of judicial power,, refused to do his duty to take jurisdiction for the violations of Amy's constitutonal protected rights; deprived Amy free exercise of her rights, which are protected under the Constitution and laws of the United States for redress to vindicate deprivation of her Constitutional protected rights to have federal

court make a decision upon her constitutional claims and legal rights of false arrest as being violative of the 1st and 4th Amendments,, false imprisonment, deprivation of Amy's liberty without Due Process and Equal Protection of the laws as being violative of the 1st, 4th, 5th, 6th, 7th, 8th and 14th Amendments secured to Amy by the Constitution of the U. S.

That by forwarding his Order of Dismissal to the U.S. Court of Appeals for the First Circuit prior to petitioner filing an appeal,, Judge Loughlin prejudiced petitioner's appeal, to obstruct justice.

U.S. District Court docket shows NO ATTORNEYS OF RECORD,. NO ANSWER BY THE NAMED DEFENDANTS TO PETITIONER'S COMPLAINT. Therefore, there can be no appellees on record with the First Circuit Court of Appeals.

Where the Appeals Court for the First

Circuit in its Memorandum and Order dated August 26, 1986,, state: maybe if it isn't res judicata or collateral estoppel, then it is stare decisis, citing a frivolous decision that is totally irrelevant to the issues in the instant action and to the petitioner's constitutional claims independent of her parents constititonal claims and saying this Appeals Court can do as it pleases. has obstructed justice.

Petitioner says, "NO" this Appeals Court cannot do as it pleases. The Constitution and laws of the U.S. directs this Appeals Court what to do, so does the U.S. Supreme Court in its decisions. id App 11a.

Petitioner is here before this U. S. Supreme Court to vindicate Amy's Constitutional protected rights that were violated by the above named defendants in the Keene District Court, the federal court and the Appeals Court for the First Circuit.

REASONS FOR GRANTING THE WRIT

After parking his police car in parents' driveway, and where there was no "good faith" for Patrolman LaCoste to force entry into Amy's/parents' home without probable cause,, where no prior offense was committed or being committed, without a warrant,, unreasonably arrested Amy,, a minor; removed her from her own home; detained her at the police station without notifying the minor or her parents of the charge for the arrest, violated Amy's rights and her parents' Fourth Amendment rights and NH Const. pt 1, art 19:

> "the right of people to be secure in their persons, house, papers, and effects against unreasonable searches and seizures, shall not be violated."

Bevins v Six Unknown Agents 463 US 388; Monroe v Pape 365 US 167; Payton v New York 445 US 573; Mapp v Ohio 367 US 643; Johnson v U.S. 333 US 13; Beck v Ohio 379

US 89; Llaguno v Mingey 763 F2d 1560 (7th Cir. 1985) for violations of 4th Amend.; Madison v Purdy 410 F2d 90 (5th Cir. 1969) State v Morse 125 NH 403; State v Chaisson 125 NH 810 (where LaCoste committed false arrest)

> "there is no "good faith" in the validity of an arrest without a warrant" and for unlawful arrest without an offense committed. Anno 26 A.L.R. 286

See Henry v U.S. 361 US 98 (1959)

> "good faith" is not enough to seize Amy without an offense committed, it lacks probable cause."

Sexton v Gibbs 327 F.Supp 134; Basista v Weir 340 F2d 74 (3rd Cir. 1965); Peterson v Stanczak 48 F.R.D. 429; U.S.C.A. Const. Amend. 4; and where Amy's parents have the right under NH RSA 627:6 to correct or punish the minor.

There was and is no warrant for Amy's arrest, there were no pre-arraignment orders on August 3, 1984 signed by a judge

for Amy's de ention, see EXH id page 4b, 5b petition of August 4, 1984; Amy was denied the right to call her parents and her counsel; Amy was interrogated without her attorney present in violation of her rights under Miranda v Arizona 384 US 436, that all information unconstitutionally seized is inadmissible, as in Mapp v Ohio, supra; State v Morse, supra; State v Benoit 126 NH 6 (1985); U.S.C. Amend, 4 & 5.

Sgt. Brown's oral notice by 'phone at 8:50 a.m. Saturday, August 4, 1984 of a hearing at 9:00 that day, without specifics or of the allegations, or that it was an arraignment, or where the hearing was to be held, or why Amy was arrested and/or why she was being detained,, does not meet due process and equal protection of the law. It is not within the scope of Sgt. Brown's duties to notify Amy's parents of a hearing. NH RSA 169-B:7 requires the

court to issue summons to the parents with petition attached to appear in court as in re Russell C. 120 NH 260; DiPietro v Lavigne 98 NH 294; in re Poulin 100 NH 458; and as required by the U.S. Supreme Court in re Gault 387 US 1:

> "(1) Written notice of the specific charge or factual allegations, given to the child and his parents or guardian sufficiently in advance of the hearing to permit preparation"

Amy and her parents were never served written notice of the petition of August 4, 1984 as required by law, see EXH id NH RSA 169-B:13 I(a); RSA 169-B:7 at pages 2b, 3b; as required by the U.S. Supreme Court as in re Gault, supra. U.S.C.A. Amend 5.

The petition names the parents as recipients to the alleged offense, that Amy was fighting and having physical contact with her parents, Henry and Julia Malachowski (id EXH page 1b); is fatally defective under NH RSA 169-B:6,, lacking in

particularity as being unconstitutional and void for vagueness. The petition, id EXH page 1b, fails to state where (place) the incident took place is defective, as in State v Mealey 100 NH 228, and is contrary to the August 3, 1984 police report (received by Amy's parents on January 22, 1985 through federal court intervention) id EXH page 13b, which showed Amy was not fighting or having physical contact with her parents, precludes "good faith" on the part of Patrolman LaCoste for impermissible forced entry into Amy's home. RSA 644: 2 contains a number of different offenses, all of which are characterized with the intent to disturb the public on public property and as applied against Amy, is unconstitutional, void for vagueness, State v Mealey, supra; State v Laponsee 115 NH 56; State v Nickerson 120 NH 821. Amy was in her own home expressing free speech at her

parents,. within the total confines of her own home.. Her parents did not file a compaint and there was no intent to disturb the public. Such free speech in her own home is under the protection of the 1st and 4th Amendments of the Constitution of the U. S. and N.H. Constitution Part 1, art. 19. Lusk v Roberts 611 F.Supp 564;

> "Cursing in the presense of a police officer is considered protected speech under the U.S. Constitution (U.S.C.A. Amend.1)"

see State v Nickerson, supra; Llaguno v Mingey,. supra

At the initial hearing of August 4,. the record shows (id EXH page 2b,. 3b) Amy's parents were given no written notice of the petition of August 4, 1984 to appear in court as required by law NH RSA 169-B; 7 and as required by the U.S.. Supreme Court in re Gault,. supra, where Amy may be deprived of her liberty and where parents'

custody rights, protected by the 14th Amendment were at stake at 550 and as in Stanley v Illinois 405 US 645; City of Claremont v Truell 126 NH 30 (1985); Amy was not given written or oral notice of the petition charge for her arrest as provided by RSA 169-B:13 I(a) by the court. Recipients were not summoned (id EXH page 1b, 2b, 3b) to appear in court for the initial hearing; the arresting officer was not present in court; Sgt. Brown, who signed the petition, unlawfully naming himself as petitioner, could not offer testimony or offer proof beyond a reasonable doubt as required under NH RSA 169-B: 17 for reason there was no evidence of an offense committed. He was not a witness and his testimony would be inadmissible as being hearsay, as in re Gault at 562, Footnote 98; in re Russell C., supra; Kennedy v Meara 127 Ga 68; McEntee v Lynch 223 Ill

346; Ex parte Molloy 122 Va 198; Karrib v Bailey 212 Mich 502; Sharp v State 240 Miss 629; Ex parte Naccarat 328 Mo 722; in re Poulin, supra; "without notice, the order is unenforceable." Prosecution did not obtain witnesses. Barber v Page 390 US 719; Right to Confront Witnesses 23 L Ed 853; Pointer v Texas 380 US 400; Boykin v Alabama 25 L Ed 274; Molloy v Hogan 378 US 1; in re Gault, supra; Garner v Louisiana 368 US 157,, "as devoid of evidence" in the instant action, there was no evidence; Hedgwood v Kindrik 264 F.Supp 720; Motes v U. S., 178 US 458. Without the presense of the recipients at the initial hearing, the court had a duty to dismiss the action as in re Gault, supra, and for lack of subject matter jurisdiction and personal jurisdiction over the recipients to adjudicate their rights and Amy's rights as in Rankin v Howard 633 F2d 844 (9th Cir 1980);

Meyer v Nebraska 262 US 390; Prince v Massachusetts 321 US 158; for failure to provide due process and equal protection of the laws, City of Claremont v Truell, supra, and see Shore v Howard 414 F.Supp 379 (1976) at 385 (4,. 6, 7,. 8) citing Ex parte Virginia, for failure of Judge Talbot to do his duty under laws imposed upon him, deprived Amy due process of the law.

In Kinney v Lennon 425 F2d 208 (8th Cir. 1970) the court ordered the minor released to the parents to seek witnesses as in Washington v Texas 388 US 14 as a due process right under the 6th Amendment, and as in re Winship 397 US 358 Sect.. 6, Right to Bail or Release from Detention at 958 and as provided by NH RSA 169-B:11.. Amy's parents were the only persons who could aid her to resist the perjured petition charge signed by Sgt. Brown. There was no probable cause hearing under RSA 169-B:14, I(1)

and as in Gerstein v Pugh 420 US 103; denied a right without due process, as in Bell v Burson 402 US 535 (1971). In violation of due process of the law, Amy was deprived of her liberty at YDC (prison) for 39 days on a plea of "NOT TRUE" violating the maximum period for detention of 21 days mandated by RSA 169-B: 14 II, see Eric C 124 NH 222 where the court forfeited jurisdiction after 21 days due to the fault of the state; was cruel and unusual punishment, U.S.C.A. 5th and 8th Amend.

Suppression of exculpatory evidence,, police reports of August 3, 1984 (theft by Mr. Bennett,, which he admitted to both Amy's parents on December 27, 1984) favorable to Amy's acquittal, is not within the scope of prosecuting attorney's duties - for which there is no immunity - as in Hilliard v Williams 516 F2d 1344 (6th Cir. 1975); Haaf v Grams 355 F.Supp 542. It is

not within the scope of prosecuting attorney, clerk of the court and presiding judge to deprive Amy's parents of their right under RSA 169-B:35 and under the due process and equal protection clause of the 14th Amendment to see the court files to assist Amy in defense of the action against her, which deprived Amy and her parents of constitutional protected rights in violation of § 1983. Without written notice of the petition charge against Amy, defendants permitted the perjured petition charge against Amy. All defendants had copies of the petition and the police report. In Mooney v Holohan 294 US 103:

> "The Constitutional requirement of due process is not satisfied where a conviction is obtained by the prosecution of testimony known to the prosecuting authorities to be perjured."

as in Brady v Maryland 373 US 83,. as being violative of due process of law.

All defendants were wilful partici-

pants in "state action" in joint activity with the state or its agents in depriving Amy of her liberty and in the violations of her rights secured to her by the Constitution of the U.S.. see U.S. v Price 383 US 783; Perez v Sugarman 499 F2d 761 (2nd Cir. 1974):

> "in accepting and retaining custody of children alleged to have been "neglected" or "abandoned", private child caring institutions perform a "public function" and there is thus "state action" within the meaning of Civil Rights Act, 42 USCA § 1983".

In Auster Oil & Gas Inc. v Stream 764 F2d 381 (5th Cir. 1985):

> "Nominally private conduct constitutes "state action" if connection between state and acts justifies treating private actor as agent of the state... a private party acts under color of law if her behavior makes her a willful participant in joint action with the state or its agents. 42 USCS 1983"

Where state statutes are unconstitutional, void for vagueness, unconstitutionally applied and ignored,. as in Mitch-

um v Foster 407 US 225; Newton v Burgin 363 F.Supp 783; Conover v Montemuro 477 F2d 1073 (3rd Cir. 1972-73); Alsager v District Court 518 F2d 1160 (8th Cir. 1975) and in Gault,, supra, juvenile delinquency proceedings; where at the September 11, 1984 hearing, Judge Talbot said: Amy is not a delinquent" RSA 169-B can no longer apply, petitioner is entitled to protection of her rights secured to her by the Constitution of the U.S. and the right to know under what statute she is being held in continued deprivation of her liberty.

Where there is "bad faith" and concerted overt acts,, as in Hoffman v Halden 268 F2d 280 (9th Cir. 1959),, the record shows Amy was deprived of her liberty without due process of the law, the recipients were never summoned to court for confrontation, cross-examination, rebuttal or

corroboration. U.S.C.A. 5, 14, NH Const. Part 1, art 15.

Where no offense was committed, Amy's rights protected under the 4th, 5th and 14th Amendments of the Constitution of the U. S.. and rights to fair and impartial proceedings under the 7th Amendment were clearly violated. The court should have dismissed the action for failure to make a Prima Facie Case, as in re Gault, supra. The entire record was in front of Judge Talbot, instead:

By private, prior agreement, Judge Talbot,. MM Bennett,. Park and YSI, as wilful participants in depriving Amy of her liberty, where physical custody of Amy was held at YDC under RSA 169-B,. as in State v Bryan 123 NH 420,. Sgt. Brown, who had named himself as the petitioner,. was not a witness,. he was not the recipient,. he could not prove the case beyond a reasona-

ble doubt as required by RSA 169-B:17 against Amy; as in State v Robert H 118 NH 713, as in Gault, supra, "legal supervision" was given to YSI (id EXH page 6b) without clear showing as in State v LeFebvre 91 NH 382. Judge Talbot terminated Amy and her parents' rights without instigating statutory grounds as is required in a petition by NH law RSA 169-C or 169-D, was clearly illegal relative parents' due process rights U.S.C.A. 14., deprived Amy of her Constitutional protected rights in violation of § 1983. The court was without subject matter jurisdiction and had no personal jurisdiction over Amy and her parents, it lacks all jurisdiction to adjudicate the parties rights. See Rankin v Howard, supra, there could be no enforceable order that can be entered, are hence, null and void,. Manning v Ketchum 58 F2d 948 (6th Cir. 1932) as being CORAM NON

JUDICE; as in Gault, supra; in Poulin, supra; City of Claremont v Truell, supra; Clement v Four North State Street Corp. 360 F.Supp 933 (1973) Bownes, USDJ; DiPietro v Lavigne, supra; Doe v County of Lake, Indiana 399 F.Supp 553, where:

> "A judge can be sued for failing to perform administrative acts in violation of the constitutional rights of certain citizens."

Judge Talbot, in concerted, overt acts with all named defendants, who were wilful participants, in joint activity, made private,, prior agreements "under color of law" to give parents' custody rights of Amy to YSI, is unconstitutional, continuously deprived Amy and her parents of due process of the law to rebut,, confront the issues in which he made his decision. See Escalera v N.Y. City Housing Authority 425 F2d 853 (2nd Cir. 1970) citing Goldberg v Kelly 397 US 254,, and has unconstitutionally continued placement of Amy with YSI

through Amy's minority without giving the parties written notice for such grounds.

Amy was never given oral or written notice of the petition against her. 25 L Ed 2d 368 at 960, 9, Right to Confrontation or Cross Examination.

> "Absent a valid confession, a determination of delinquency and an order of commitment to a state institution cannot be sustained in absence of sworn testimony subjected to the opportunity for cross-examination in accordance with the law and constitutional requirements, as in Gault,. the court overturned a state court determination of delinquency."

In the instant action,. the recipients to the alleged disorderly conduct offense, Henry and Julia Malachowski, were not called to court as witnesses (id EXH page 1b, 2b, 3b); the arresting officer was not present, Sgt. Brown was not a witness and could offer no testimony, there was no evidence, the incident never happened, see Garner v Louisiana,. supra Sgt. Brown falsified the petition charge against Amy and

her parents, the offense was perjured,. precludes a plea of "chargeable" or "guilty". Parents were at all times in court at the September 11, 1984 hearing, were never orally notified or given written notice of the petition charge of August 4, 1984 against Amy,. or that the parents are named by name as recipients to the alleged offense, and had no knowledge of the grounds for Amy's arrest by Patrolman LaCoste, the issues of the alleged offense of disorderly conduct were never raised. Neither Amy or her attorney made a plea of "chargeable" or "guilty",. clearly violated Amy's rights under the 5th Amendment of the U.S. Constitution and NH Constitution,. pt 1, art 15, depriving Amy of her liberty without due process of law U.S.C.A. Const. Amend. 5 for an offense that never occurred,. was perjured and was never corroborated, see Boykin v Alabama

25 L Ed 274, citing Woods v Rhay 68 Wash 2d 601; Faretta v California 422 US 806, "never notified of the charge" Lego v Twomey 404 US 477, "unless where waiver was obtained"; there is no written waiver on record; Molloy v Hogan, supra, "without evidence, admissibility of plea is void"; as in Garner v Louisiana, supra, as devoid of evidence; McKeiver v Penn 403 US 528, "as a waiver of rights"; Mc Carthy v U.S. 394 US 459, "where trial judge must inquire to a plea". Parents say: there was no hearing, no judge. In Bramlet v Peterson 307 F.Supp 1311:

> "record must affirmatively show that a guilty plea is knowingly and voluntarily made"

See State v Benoit, supra, there is no written or signed waiver form on record.

Petitioner Amy contends she was never made known of the petition charge against her orally or written, she was continu-

ously told by her attorney that she is a delinquent for running away and swearing and will always be a delinquent. Amy was never told the meaning of appeal, RSA 169-B:29 or informed of her constitutional protected rights under RSA 169-B:13 I(b), or under the 5th Amendment to the Constitution of the U.S. where her liberty is at stake, and be continuously lied to by her attorney not retained by her parents. Mr. Park was a former assistant attorney for the City of Keene and attorney for the Keene Police Department, such conflict of interest predjudiced Amy's Constitutional protected rights, and violated parents' rights to retain counsel for Amy, wherein Amy already had counsel retained for the injury sustained to her head, of which Mr. Park was well aware. McBride v Jacobs

Where Dr. Noonan in taking a psychological evaluation, impermissibly intruded in-

to Amy's and her parents' "privacy" and "interest" which is protected by the 4th Amendment of the Constitution of the U.S., defamed and libeled Amy and her parents without corroboration, rebuttal or confrontation and with total disregard for the truth. Such information was suppressed and concealed from Amy and her parents and only the defendants had copies of such evaluation. When such allegations were made known to Amy and her parents through federal court intervention, Amy denied making such allegations.

Throughout the litigation in Keene District Court, Amy was never read her Miranda Rights to remain silent; the Keene District Court on its own motion should have dismissed the delinquency action against Amy on August 4, 1984 for failure to comply with due process of law guaranteed to Amy under the 5th Amendment of the Con-

stitution of the U.S. and NH Constitution pt 1, art. 15. Sgt. Brown is not the recipient named in the petition,. he could not be the petitioner. The arresting Patrolman LaCoste was not in court at the initial hearing or September 11, 1984 hearing. The recipients, Henry and Julia Malachowski were never called to court to offer testimony,, confrontation, cross-examination,. rebuttal or corroboration as in Gault, supra, the petition charge against Amy cannot be sustained,. as in re Gault, supra, the Keene District Court had no case. The petition charge against Amy was fabricated and perjured. See Opper v United States 348 US 84,"that such elements of a crime are not sufficient to justify conviction, in absence of corroboration." Recipients were never called to court for corroboration.

Where the Keene Court files were concealed and suppressed, and police report

stolen. Amy has a right to redress under laws enacted by Congress and under the Constitution of the U.S. when such evidence became known to Amy and her parents. See American Civil Liberties Union v City of Chicago 431 F.Supp 25 (1976) and where Judge Talbot failed to do his duty under laws imposed upon him, which deprived Amy of Constitutional protected rights, remedy is provided under the Constitution of the U.S. and laws enacted by Congress see Littleton v Berbling 468 F2d 389 (7th Cir. 1972) and where there is no subject matter and personal jurisdiction over the parties Judge Talbot acted in clear and complete absence of all jurisdiction he is liable, see Rankin v Howard, supra; Manning v Ketchum, supra; see Bush v Lucas, supra, 634;

> "The federal courts' power to grant relief...is firmly eastablished. Under 28 USC § 1331..., the federal courts have jurisdiction to decide all cases "aris(ing) under the Constitution,

> laws, or treaties of the United States" This jurisdictional grant provides not only the authority to decide whether a cause of action is stated by a plaintiff's claim that he has been injured by a violation of the Constitution. Bell v Hood,. 327 US 678.. but also the authority to choose among available remedies in order to vindicate constitutional rights... Bevin v Six Unknown Fed. Narcotic Agents,. 403 US 388.."

Where the petitioner avers evidence of "state action" violative of Amy and her parents Equal Rights and Due Process Rights, as in Lugar v Edmondson Oil Co. 457 US 922 (1982); Auster Oil, supra; Perez v Sugarman, supra; and see Zarcone v Perry (2nd Cir. 1978) for deprivation of constitutional rights in violation of 42 U.S.C. § 1983. Goss v Lopez 419 US 656; as being violative of due process and all hearings are invalid. That "under color of law" for purposes of civil rights statute. 42 USCA § 1983 as in Watters v Parrish 402 F.Supp 696 (1975) with 28 USCA §1343(3).

McCollester v City of Keene, NH 514

F.Supp 1046 (1981) as to 1st Amendment rights, and right to free speech; and as cited in Rogers v Peck 199 US 425 (1905):

> "Whenever a citizen is denied a right guaranteed by the Federal Constitution, or is subject to a penalty forbidden by it, the Federal courts have jurisdiction and may grant relief."

In petitioner's Civil Rights action avering Constitutional protected rights in violation of § 1983, of false arrest, false imprisonment, deprivation of Amy's liberty without due process of the law. Judge Loughlin's Order of Dismissal id App. page 1, "where result of ruling was effectually to preclude plaintiff from court. 28 U.S.C.A. 1343; 42 U.S.C.A 1983." cited in Spires v Bottorff 317 F2d 273 (7th Cir. 1963). and see Exh page 14b.

The issues in re C-84-697-L are parrents' custody rights where the State of New Hampshire interfered and deprived Amy's parents of their protected rights

under the Due Process Clause of the 14th Amendment of custody of Amy without due process of the law. Parents were not falsely arrested, imprisoned without due process of the law and equal protection of the laws,. the record shows these facts.. The petition dated August 4, 1984 signed by Sgt. Brown, Juvenile Officer of the Keene Police Department,. shows that Amy was arrested for an alleged disorderly conduct charge of NH RSA 644:2, id EXH 1b, names Amy's parents in the petition which they never signed, as the recipients to the procedural due process requirements mandated by the U. S. Supreme Court in re Gault 387 US 1, are party plaintiffs necessary to Amy's Civil Rights Action where Amy has a right to her parents' assistance to vindicate her Civil Rights.

Petitioner contends Res Judicata does not apply where the issues are not the

same, and the causes of action are not the same. The parties are not the same. There is no judgment entered in Amy's name, precludes Res Judicata, as in Moore's Federal Practice - Res Judicata 0.411 Persons Bound by Prior Adjudication.

> ".. A matter cannot be res judicata unless there be identity of the thing sued for, of the cause of action, of the persons and parties,. the quality of the persons for and against whom the claim is made,. and the judgment in the former action be so in point as to control the issue in the pending suit."

Petitioner contends, the Federal Court (Martin F. Loughlin, USDJ) made reversible errors substantially effecting petitioner's (Amy) legal rights and obligations which, if uncorrected would result in a miscarriage of justice and which justifies reversing a judgment in the court below.

That the orders entered by the lower courts is clearly an abdication of duty under the Constitution and laws of the

United States, is obstruction of justice.

The lower court and Appeals Court ignored petitioner's Civil Rights action avering constitutional claims and was not afforded the opportunity to prove it, was deprived of evidentiary hearings. See Escalera v N.Y. City Housing Authority 425 F2d 853 (2nd Cir. 1970) at 857 (1, 2):

> "An action especially under the Civil Rights Act should not be dismissed at the pleading stage."

and in Wasson v Trowbridge 382 F2d 807 (2nd Cir. 1967):

> "Appellant's Constitutional claims cannot be dismissed without an evidentiary hearing."

As in Escalera; "no court can make such instant decision."

In light of the foregoing,, the petitioners move this U.S. Supreme Court to vacate the Judgments entered by the lower inferior courts and remand this Civil Rights case for further proceedings that comply

with the Constitution and laws of the U.S. and the decisions of its courts and that some Judge other than Loughlin or Shane Devine preside.

CONCLUSION

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED

October 10, 1986

Respectfully submitted
Petitioner-plaintiff

Henry Malachowski - Pro Se

Julia Malachowski - Pro Se

28 Wright Street
Keene, New Hampshire 03431
(603) 352-5822

and as

Henry Malachowski and Julia Malachowski, in Representative capacity, Parents and parties in interest for AMY CHRISTINE MALACHOWSKI, a minor.

Henry Malachowski

Julia Malachowski

A P P E N D I X

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW HAMPSHIRE

Henry Malachowski, et al.

v. #C86-150-L

City of Keene, et al.

ORDER OF DISMISSAL

The court hereby dismisses the complaint of the pro se plaintiffs which was filed in this court on April 1, 1986. On March 28, 1986 the United States Court of Appeals For the First Circuit, in a lengthy, well-reasoned twenty-six page opinion affirmed the judgment of this court. The court had, in that case, dismissed a similar plaintiff's action which was filed initially on November 1, 1984.

This court did not receive a copy of the Circuit Court opinion until March 31, 1986 and this complaint was filed the day thereafter. The plaintiffs in this action have sued nine of the same defen-

dants in their first action, two more alleged defendants Linda Kent and Michael A Noonan have been added to the pending complaint. In the first action, a defendant, Richard Archibald was sued but has not been sued in this action.

The court orders that this action be dismissed because it is res judicata and actually is based upon the same issues as in the earlier suit. To allow the plaintiffs to initiate this action would be unconscionable and an abuse of process. In the original suit three law firms and the Attorney General's office were involved. Including the appeal to the First Circuit Court, there are over one hundred seventy docket entries and the cost of counsel fees to the original defendants must have been astronomical. A copy of this order is being sent certified mail, return receipt requested, to

alleged putative defendants, as well as to their respective counsel and to the United States Court of Appeals for the First Circuit. Such mailing shall constitue service in this case.

In the future no further complaints will be filed in the Clerk's office without the prior approval of the Court (Loughlin, J.) of the District of New Hampshire.

April 10, 1986

/s/
Martin F. Loughin
U.S. District Judge

Henry and Julia Malachowski
Clerk, First Circuit Court of Appeals
City of Keene
Mark J. Bennett, Esq.
Keene Police Deaprtment
Randall LaCoste
Sergeant H. Brown
Honorable Bernard J. Hampsey, Jr.
Honorable Richard J. Talbot
David S. Park, Esq.
Youth Services, Inc. of the Monadnock Region
Linda Kent
Michael A. Noonan
Richard C. Gagliuso, Esq.

Donald E. Gardner, Esq.
Michael B. O'Shaughnessy, Esq.
Office of the Attorney General

UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF NEW HAMPSHIRE

Henry Malachowski and
Julia Malachowski

v. Civil Action No.
86-150-L

City of Keene, et al

J U D G M E N T

In accourdance with the ORDER OF IDSMISSAL dated April 10, 1986 by the Honorable Martin F. Loughlin, United States District Judge, judgment is hereby entered.

By the Court,

/s/ James R. Starr
Clerk

April 10, 1986

cc: Henry and Julia Malachowski, pro se
Mark Bennett, Esq.
Randall LaCoste
Sergeant H. Brown
Honorable Bernard J. Hampsey, Jr.
Honorable Richard J. Talbot
David S. Park, Esq.
Linda Kent
Michael A. Noonan
Richard C. Gagliuso, Esq.
Donald E. Gardner, Esq.

Michael B. O'Shaughnessy, Esq.
Loretta S. Platt, Esq.

Please note: Misspelling is exact copy from original.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

HENRY MALACHOWSKI and/or JULIA MALACHOWSKI Plaintiff	)))Civil)No. C
HENRY MALACHOWSKI and/or JULIA MALACHOWSKI in representative capacity, parents and parties in interest for AMY CHRISTINE MALACHOWSKI, a minor Plaintiff	)86-)150-D)or L
VS.	
CITY OF KEENE MARK J. BENNETT, ESQ.	
CITY OF KEENE POLICE DEPARTMENT PATROLMAN RANDALL LaCOSTE SERGEANT H. BROWN	
JUDGE BERNARD J. HAMPSEY, Jr. JUDGE RICHARD J. TALBOT	
DAVID S. PARK, ESQ.	
YOUTH SERVICES, INC. of the MONADNOCK REGION LINDA KENT	)April)25,)1986
MICHAEL A. NOONAN, PhD. Defendants	

NOTICE OF APPEAL

Notice is hereby given that the plaintiff, a minor above named, through Henry

and Julia Malachowski in representative capacity, and as parents and parties in interest, hereby files an appeal to the United States Court of Appeals for the First Circuit from the Order of Dismissal by Martin F. Loughlin, U.S.D.J., dated April 10, 1986 and Judgment entered April 10, 1986 which prevents and hinders plaintiff, Amy Christine Malachowski, free exercise of her rights secured by the Constitution of the United States and laws invoked to prosecute her Civil Rights Action. Where Martin F. Loughlin, U.S.D.J., clearly abused his discretion and usurpation of judicial power, did obstruct justice with total disregard of the Constitution and laws of the United States imposed upon him; misapplied the Doctrine of Res Adjudicata, where the parties are not the same and the causes are not the same, thereby deprived the

plaintiff (Amy) of her rights to redress for her constitutional claims of false arrest, false imprisonment and unconstitutional detention and conduct against the named defendants to prosecute her constitutional claims in this United States District Court.

In blatant abuse of his power and duty, Martin F. Loughlin, U.S.D.J., prohibited the Malachowskis, Henry, Julia and/or Amy Christine, to file complaint(s) or other pleadings with this court, thus depriving these parents and/or Amy their free exercise of their rights secured, protected and guaranteed by the Federal Constitution.

Respectfully submitted,
PLAINTIFFS,

/s/
HENRY MALACHOWSKI - Pro Se

/s/
JULIA MALACHOWSKI - Pro Se

28 Wright Street
Keene, New Hampshire 03431
(603) 352-5822

HENRY MALACHOWSKI and/or
JULIA MALACHOWSKI in representative capacity,
parents and parties in interest for
AMY CHRISTINE MALACHOWSKI,
a minor.

/s/
Henry Malachowski

/s/
Julia Malachowski

cc: Dana Gallup, Circuit Executive

UNITED STATES COURT OF APPEALS

For The FIRST CIRCUIT

DOCKET NO. 86-1560

HENRY MALACHOWSKI and/or
JULIA MALACHOWSKI,
HENRY MALACHOWSKI and/or
JULIA MALACHOWSKI in
representative capacity,
parents and parties in
interest for
AMY CHRISTINE MALACHOWSKI, a minor
Plaintiffs, Appellants

V.

CITY OF KEENE, et al.

MOTION TO REMAND

NOW COMES Appellant,, Amy Christine Malachowski,, a minor,, by her parents, parties in interest,, in representative capacity, and hereby moves this Appeals Court to remand the action immediately to Federal Court on grounds that this Appeals

Court has no jurisdiction over issues not tried in the lower court and say:

1. This Appeals Court is obstructing justice, is not a trial court and has no jurisdiction or authority to act upon issues not tried in the lower court where there are no defendants on record, no answers to plaintiff's complaint, no attorneys on record, therefore there can be no appellees.

2. This Appeals Court is deliberately abusing its appellate jurisdiction and authority by ruling upon unauthorized papers submitted constitutes deliberate obstruction of justice.

3. Martin F. Loughlin, as a United States District Judge has no authority to preclude the minor, Amy Christine Malachowski, to prosecute her constitutional claims and legal rights in federal court of false arrest, false imprisonment, deprivation of liberty without due process

of the law guaranteed to the minor under the Fifth and Fourteenth Amendments of the Constitution of the United States and under the First, Fourth, Sixth, Seventh and Eighth Amendments which are not judicial acts normally performed by a federal judge.

WHEREFORE:

Appellant, Amy Christine Malachowski, a minor, by her parents, parties in interest and in representative capacity,. hereby demand this Court do its appellate duty and remand the unconstitutional misconduct of Martin F. Loughlin, USDJ, to Federal Court to comply with laws enacted by Congress,. the Constitution of the United States, and Rules set forth under Federal Rules of Civil Procedure.

That some other impartial judge hear the minor's constitutional cause and legal rights.

Certification

Certification is not required, being that there are no defendants on record in the trial court,. there are no answers to plaintiff's complaint, there are no attorneys of record in the trial court, therefore there is and can be no appellees.

This Motion to Remand will be used in plaintiff's petition to the United States Supreme Court for a Writ of Certiorari.

Dated at Keene, N.H. this 09th day of August,. 1986

For the Appellant, Plaintiff,

AMY CHRISTINE MALACHOWSKI

Parents, Parties in interest, in representative capacity for the minor, Amy Christine Malachowski

HENRY MALACHOWSKI

JULIA MALACHOWSKI
28 Wright Street
Keene, New Hampshire 03431
(603) 352-5822

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 86-1560

HENRY MALACHOWSKI and
JULIA MALACHOWSKI,
Plaintiffs, Appellants

V.

CITY OF KEENE, ET AL.,
Defendants, Appellees.

Before
Campbell, Chief Judge
Bownes and Breyer, Circuit Judges.

MEMORANDUM AND ORDER

Entered August 26, 1986

Appellants appeal from the district court's order dismissing their complaint on the ground that it is barred res judicata by this court's decision in Malachowski v. City of Keene, 787 F.2d 704 (1st cir. 1986). We agree that appellants' claims brought on their own behalf against nine defendants also named as defendants

in the prior case -- the City of Keene, the City of Keene Police Department, Mark Bennett, Randall LaCoste, Sergeant H. Brown,. Judge Bernard Hampsey, Judge Richard Talbot,. David Park, and Youth Services, Inc. -- are barred by the doctrine of res judicata.

As for appellants' claims against these nine defendants brought in a representative capacity on behalf of their daughter, a minor, we need not decide whether these claims, too, are barred by res judicata. Even if they are not,, see 1B Moore's Federal Practice ¶ 0.411(11) (2nd ed 1984), and even assuming they are not barred by related principles of collateral estoppel,. we hold under the doctrine of stare decisis these claims were properly dismissed for the reasons set out in our prior opinion.. See Helvering v.. Gowran,. 302 U.S. 238,. 245 (1937)

(court of appeals can affirm on any ground presented by the record).

Appellants' damages claims against defendants Linda Kent and Michael Noonan -- both those brought on their own behalf and those brought on behalf of their daughter -- also were properly dismissed. Kent, as director of defendant Youth Services, Inc., did not act under color of state law. Malachowski v. City of Keene, supra, 787 F.2d at 710-11. Noonan, as a state psychologist who submitted psychological findings regarding appellants' daughter to the juvenile court, enjoys absolute immunity from damages liability under § 1983. Id. at 712; Kurzawa v. Mueller, 732 F.2d 1456, 1458 (6th Cir. 1984). Appellants' claims for injunctive relief and criminal penalties against Kent and Noonan were properly dismissed for the reasons set out in our prior opinion.

Malachowski v. City of Keene, supra, 787 F.2d at 707-09.

Appellees' joint motion for summary disposition is granted. The appeal is dismissed. Appellees' motion to strike pleadings and brief, and for extension of time to respond, accordingly is denied as moot. Appellants' second motion to remand is denied as moot.

By the Court:

Francis P. Scigliano,
Clerk

By: Janice M. O'Neil
Supervisory Deputy

cc: Messrs: Malachowski, Gagliuso, Rogers, Shea, Park, Ms. Gordon and Ms. Malachowski

RECD 8/27/86
SENT 9/2

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 86-1560

HENRY MALACHOWSKI and
JULIA MALACHOWSKI,
Plaintiffs, Appellants

v.

CITY OF KEENE, ET Al.,
Defendants, Appellees.

Before

Coffin, Chief Judge
Bownes and Breyer, Circuit Judges

MEMORANDUM AND ORDER

Entered August 26, 1986

Appellants appeal from the District Court's order dismissing their complaint on the ground that it is barred by res judicata by this court's decision in Malachowski v. City of Keene, 788 F.2d 70 (1st Cir. 1986). We agree that appellants' claims brought on their own behalf against nine defendants also named as defendants

THIS COURT HAS NO JURISDICTION OR AUTHORITY TO DECIDE APPEAL EXCEPT TO REMAND FOR COMPLIANCE WITH FEDERAL RULES OF CIVIL PROCEDURE THERE IS NO RECORD

E X H I B I T S

THE STATE OF NEW HAMPSHIRE

JUVENILE PETITION

Cheshire SS. Keene District Court

84-210 Juvenile Case No.

TO THE JUSTICE OF SAID DISTRICT COURT:

The undersigned represents that Amy Christine Malachowski of 28 Wright St., Keene, NH being 16 years of age,, and whose date of birth is 3 April, 1968 XX is delinquent...in that said juvenile on August 3, 1984 at 10:15 PM at Wright St., Keene NH is alleged to have committed the offense of Disorderly Conduct contrary to RSA 644:2, in that he/she did:

did purposely engage in fighting, tumultuous,, and threatening behavior by yelling obsenities and engaging in physical contact with her parents Henry and Julia Malachowski,, said conduct serving no ligitimate purpose,, and said conduct continuing despite repeated lawful orders of Ptlm.

(JUVENILE PETITION - cont.)

Randall LaCoste of the Keene Police Department to stop.

and that Henry/Julia Malachowski of 28 Wright St., Keene NH is/are the person(s) having custody or control of the juvenile and that Henry/Julia Malachowski of Keene is/are the parents or guardians of said juvenile.

Date 4 AUG 84 Sgt. H. Brown - Juvenile Officer, Keene Police

(Petitioner's signature)

Subscribed and sworn to by petitioner, before me, Carol M Davis

(Justice of Peace)

ORDER OF NOTICE OF HEARING

The foregoing petition has been presented, it is ordered that a hearing be held at 9:00 on 4 Aug 1984 at said District Court, and Julia and or Henry Malachowski, the person(s) having custody or control of

(JUVENILE PETITION - cont.)

the juvenile is/are hereby summoned to appear with the juvenile at said hearing.

Date_____ _____Carol M Davis_____
(Clerk of Court) Acting

RETURN OF NOTICE

At_____on_____, 19__, I summoned and notified the within named person(s) having custody or control of the juvenile, to appear with the juvenile at said court as ordered herein.

_____
(Police Officer)

STATEMENT OF RIGHTS

You are advised that you have a right to be represented by an attorney,. unless you waive or give up that right by signing a waiver. If you desire an attorney, you should hire one before the date set for hearing. If you are unable to afford an attorney,, the Court will appoint one to represent you. YOU SHOULD CALL THE COURT

(JUVENILE PETITION - cont.)

IMMEDIATELY IF YOU WANT A COURT APPOINTED ATTORNEY. In the event that you need additional time to obtain an attorney or prepare a response to this petition, application should be made to the Court for an extension of time. You are further advised that you have a right to remain silent and need not make any statements or give any evidence which might show that you have committed the offense stated in the petition. Your silence even in the face of an accusation cannot be used against you, but what you say can be used against you.

Page 2

PRE-ARRAIGNMENT ORDERS

Pending arraignment said juvenile shall be ☐ placed ☐ detained at _____

pending arraignment on _____
(Date and time)

(JUVENILE PETITION - cont.)

It is further ordered that Attorney_____ be appointed to represent said juvenile.

_____ _____
Date Justice

ARRAIGNMENT

On 8/4, 1984 an arraignment was held.

Present were:_____Counsel Park

Plea: ☐ True [X] Not True

Hearing Date 8/21/84

Following arraignment it is ordered that said juvenile be held at YDC. A psychological exam is requested. City of Keene legally liable unit.

8/4/84 (Initialed)
Date Justice

ADJUDICATORY HEARING

On 9/11, 1984 an adjudicatory hearing was held. Present were Parents Counsel Park After hearing the evidence submitted the Court finds and orders as follows:

(JUVENILE PETITION - cont.)

☐ The State ☒ did ☐ did not prove its case beyond a reasonable doubt Plea of chargeable

☐ The evidence ☐ does ☐ does not substantiate the petition: petition is dismissed.

☐ The case is referred to the Probation Department or other agency_____for an investigation and written report.

☐ It is ordered that a physical and/or mental examination of the juvenile be conducted by_____with expenses thereof borne by_____

☐ The juvenile is to be held at_____ pending disposition on_____
Date and Time

The Court further orders: Legal supervision to YSI - con'd to 10/11/84 for final disposition. City of Keene legally liable unit.

9/11/84 (Initialed)
Date Justice

(JUVENILE PETITION - cont.)

DISPOSITIONAL HEARING

On 10/11, 1984 a dispositional hearing was held. Present were Park for juvenile, parents & YSI

The following disposition is ordered:

☐ Juvenile is released in the custody of_____

☐ Juvenile is released in the care and supervision of_____

☐ Fine ☐ Restitution in the amount of____

☐ Juvenile ordered to undergo the following treatment_____

☒ Other orders Legal supervision to YSI; family counselling recommended (?) possible; review 12/27/84 City of Keene legally liable unit

OR

☐ Juvenile committed to_____ in_____for his/her minority.

10/11/84
Date

(Initialed)
Justice

8b

28 Wright Street

Keene, New Hampshire 03431

October 05, 1984

Sergeant H. Brown

Keene Police Department

Juvenile Division

Washington Street

Keene, New Hampshire 03431

Re: Petition #84-210

Amy Christine Malachowski

Sir:

This is to confirm my conversation with you at your office on October 05, 1984.

The complainants in the above entitled action, Henry and Julia Malachowski, hereby respectfully request the Court to withdraw their complaint and dismiss all claims and/or charges in the petition brought by Sergeant H. Brown dated 4 August, 1984 in re Amy Christine Malachowski.

Respectfully submitted,

The Complainants,

_____L.S.
Henry Malachowski

_____L.S.
Julia Malachowski

Copy to: Clerk, Keene District Court

Mark Bennett, Esq.

David Park, Esq.

THE STATE OF NEW HAMPSHIRE

(SEAL)

THE ATTORNEY GENERAL

STATE HOUSE ANNEX

25 CAPITOL STREET

CONCORD, NEW HAMPSHIRE 03301-6397

January 3, 1985

Ms. Lucille J. Gorges, Clerk

Keene District Court

City Hall

Keene, New Hampshire 03431

Re: Malachowski, et al. v Keene, et al.

Federal District Court Docket #84-697-L

Dear Ms. Gorges:

As we discussed in our telephone conversation on Wednesday, January 2, 1985, the Federal District Court held a hearing on all motions pending in the referenced case. During that hearing, Judge Loughlin requested that I contact your court to ascertain whether there would be any

objection to providing Mr. and Mrs. Malachowski access to the juvenile records of their daughter, Amy Christine Malachowski. Such access is apparently authorized by RSA 169-B:35 because the Malachowskis are the parents of the juvenile in question. It is my understanding that you have no objection to mailing a copy of Amy Malachowski's juvenile record to Mr. and Mrs. Malachowski. That being the case, I would appreciate it if you would mail a copy of that record at your convenience to: Mr. and Mrs. Henry Malachowski, 28 Wright Street, Keene, New Hampshire 03431.

Please note that the Court has not authorized anyone else to obtain these records. They should be sent only to the Malachowskis. If you have any questions concerning this matter, please let me know.

Very truly yours,

Ronald F. Rodgers

Assistant Attorney General

Division of Legal Counsel

cc: counsel of record

(SEAL) CITY OF KEENE
NEW HAMPSHIRE 03431

January 21, 1985

Mr. Henry Malachowski

28 Wright Street

Keene, NH 03431

RE: Malachowski, et ux vs. City of Keene, et al.

U.S. District Court, No. C-84-697-L

Dear Mr. Malachowski:

Pursuant to your request, and upon recent advice of my counsel, enclosed please find copies of the Police reports pertaining to Keene District Court No. 84-210 (juvenile). In re: Amy Malachowski. Please respect the confidentiality of these sensitive materials pertaining to a juvenile.

Sincerely,

Mark J. Bennett
City Attorney

/ehl

cc: John P. Shea, Esq.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

DOCKET No. 86-1560

HENRY MALACHOWSKI and/or
Julia Malachowski,

HENRY MALACHOWSKI and/or
JULIA MALACHOWSKI in
representative capacity,
parents and parties in
interest for
AMY CHRISTINE MALACHOWSKI, a minor
Plaintiffs, Appellants

V.

CITY OF KEENE, et al.

MOTION TO REMAND

NOW COMES Appellant,, Amy Christine Malachowski,, a minor,, by her parents, parties in interest,, in representative capacity,, and hereby moves this Appeals Court to remand the action immediately to Federal Court on grounds that this Appeals Court has no jurisdiction over issues not tried in the lower court and say:

1. This Appeals Court is obstructing justice,, is not a trial court and has no

jurisdiction or authority to act upon issues not tried in the lower court where there are no defendants on record,, no answers to plaintiff's complaint,, no attorneys on record,, therefore there can be no appellees.

2. This Appeals Court is deliberately abusing its appellate jurisdiction and authority by ruling upon unauthorized papers submitted constitutes deliberate obstruction of justice.

3. Martin F. Loughlin, as a United States District Judge has no authority to preclude the minor, Amy Christine Malachowski,, to prosecute her constitutional claims and legal rights in federal court of false arrest,,. false imprisonment,, deprivation of liberty without due process of the law guaranteed to the minor under the Fifth and Fourteenth Amendments of the Constitution of the United States and

under the First, Fourth, Sixth, Seventh and Eighth Amendments which are not judicial acts normally performed by a federal judge.

WHEREFORE:

Appellant,. Amy Christine Malachowski, a minor,. by her parents,, parties in interest and in representative capacity, hereby demand this Court do its appellate duty and remand the unconstitutional misconduct of Martin F. Loughlin,. USDJ, to Federal Court to comply with laws enacted by Congress,. the Constitution of the United States,, and Rules set forth under Federal Rules of Civil Procedure.

That some other impartial judge hear the minor's constitutional cause and legal rights..

CERTIFICATION

Certification is not required,. being that there are no defendants on record in

the trial court,, there are no answers to plaintiff's complaint,, there are no attorneys of record in the trial court, therefore there is and can be no appellees.

This Motion to Remand will be used in plaintiff's petition to the United States Supreme Court for a Writ of Certiorari.

Dated at Keene, N.H. this 09th. day of August, 1986

For the Appellant,. Plaintiff,

Amy Christine Malachowski

Parents, Parties in interest in Representative capacity for the minor, Amy Christine Malachowski

Henry Malachowski

Julia Malachowski
28 Wright Street
Keene, New Hampshire 03431
(603) 352-5822

SEAL

CITY OF KEENE
NEW HAMPSHIRE 03431

April 8, 1985

Michael Burke,, Esq.

Epstein and Burke

8-1/2 No.. State Street

Concord, NH 03301

Re: In Re Amy Malachowski
Keene District Court
Juvenile Nos. 84-20 and 84-210

Dear Mike:

As per our telephone discussion of last week,. I am enclosing the City's check in the amount of Six Hundred Dollars($600.00) drawn to the order of Henry and Julia Malachowski.

This check represents the entire balance paid to the City by the Malachowskis respecting two juvenile cases in Keene District Court regarding Amy Malachowski (captioned as above).

It is my understanding that acceptance of this enclosed sum by the Malachowskis constitutes a comprehensive and final resolution of any claims that the Malachowskis may have against the City of Keene respecting their liability to the City, as legally liable unit, under the New Hampshire Supreme Court's decision in Claremont v. Truell, decided February 7, 1985. Additionally, as we have discussed, the City has reviewed the cases at hand and concluded that maintaining a lien on the Malachowski's home is inappropriate under the circumstances, in light of the Truell case. The present lien will be discharged forthwith and I will ask our Welfare Department to forward a copy of the discharge to you.

Thank you for your assistance in resolving this matter.

Best regards,.

Mark J. Bennett
City Attorney

/ehI
enc.
cc: Marguerite Christopherson,.
Welfare Director

John Shea, Esq.